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OCTOBER TERM, 1956

No. 744

FRIENDLY SOCIETY OF ENGRAVERS AND SKETCHMAKERS, PETITIONER,

versus

CALICO ENGRAVING COMPANY, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

HENRY HAMMER,
Columbia, South Carolina,

ISADORE S. BERNSTEIN,
Columbia, South Carolina,

CARL F. NITTO,
Passaic, New Jersey,
Attorneys for Petitioner.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

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The petitioner prays that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit, dated and entered in this case on November 7, 1956.

OPINIONS BELOW

The opinion of the District Court is not reported. The opinion of the Court of Appeals is reported in 228 F. (2d) 521.

JURISDICTION

The decision of the Court of Appeals for the Fourth Circuit was filed on November 7, 1956. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254.

QUESTION PRESENTED

Does the Labor Management Relations Act of 1947 preclude the maintenance of an action in the United States District Court by a labor society against an employer to recover damages in tort under the common law of South Carolina for malicious and willful interference with its relationships and contracts with its members?

CONSTITUTIONAL PROVISION INVOLVED

U. S. Constitution, Amendment VII.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law".

STATEMENT OF THE CASE

This action was commenced by petitioner, Friendly Society of Engravers and Sketchmakers against the respondent, Calico Engraving Company, in the United States District Court for the Eastern District of South Carolina on October 18, 1955.

Petitioner is a labor society organized as a corporation under the laws of the state of Rhode Island. The complaint states two causes of action, the first being predicated upon the theory that the respondent, by its tortious conduct, willfully and maliciously interferred with petitioner's relationships and contracts with its members who were in the employ of respondent, with resulting damages to peti-

tioner. The second cause is brought upon the theory that respondent interferred with petitioner's members in the exercise of their right to work in violation of the Right to Work Act of the State of South Carolina. Petitioner does not challenge the decision of the Court below as to its second cause of action.

Respondent moved in the District Court to dismiss the complaint upon jurisdictional grounds and upon the further ground that the complaint fails to state a claim upon which relief can be granted. The District Court granted respondent's motion upon the latter ground and dismissed the complaint. Upon appeal, the Court of Appeals for the Fourth Circuit held that petitioner's exclusive remedy was under the Labor Management Relations Act, and affirmed the Judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision herein is not in accord with applicable decisions of this Court and with applicable local decisions. This case presents an important question as to the conflict between state and federal jurisdictions in the enforcement of common law rights and the administration of the Labor Management Relations Act. This Court has often recognized the importance of resolving federal and state conflicts in the delicate field of labor relations, and the jurisdictional issue has many times been made the basis for granting writs of certiorari. *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468; *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656; *United Automobile Workers v. Wisconsin Employment Relations Board*, 351 U. S. 266. In the *Weber* case, where numerous decisions respecting labor relations are reviewed, this Court, speaking through Justice Frankfurter, stated, "The Labor Management Relations Act leaves much to the states, though Congress has refrained from telling us how much. This

penumbral area can be rendered progressively clear only by the course of litigation."

The decision of the Court below, in restricting petitioner to the administrative remedy provided under the Labor Management Relations Act, is directly in conflict with the *Laburnum case, supra,* which clearly sanctions the maintenance of an action at law for the recovery of damages on account of a common law tort. Certiorari was granted in that case for the sole purpose of determining whether a State Court was precluded from hearing the issues in a common law tort action based upon conduct which constituted unfair labor practices. The clear and unequivocal language of that opinion unquestionably resolves the conflict in favor of an action at law where the Federal Act provides no remedy for the recovery of damages for tortious conduct. We quote therefrom as follows:

> "Petitioners contend that the Act of 1947 has occupied the labor relations field so completely that no regulatory agency other than the National Labor Relations Board and no court may assert jurisdiction over unfair labor practices as defined by it, unless expressly authorized by Congress to do so. They claim that state courts accordingly are excluded not only from enjoining future unfair labor practices and thus colliding with the Board, as occurred in *Garner v. Teamsters C. & H. Local Union,* 346 U. S. 485, 98 L. Ed. 228, 74 S. Ct. 161, but that state courts are excluded also from entertaining common-law tort actions for the recovery of damages caused by such conduct. The latter exclusion is the issue here. In the *Garner case,* Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without

recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct. We see no substantial reason for reaching such a result. The contrary view is consistent with the language of the Act and there is positive support for it in our decisions and in the legislative history of the Act."

The opinion of the court below would restrict the application of *Laburnum* merely to a tort such as assault and battery, a limitation that is unwarranted from the facts presented and the principles therein enunciated. The delicit in *Laburnum* consisted of a disruption of the construction firm's business relationships through threats and intimidation of its employees by the union, conduct which admittedly constituted unfair labor practices. The clear language of the opinion undoubtedly sanctions the bringing of an action at law to recover damages for conduct constituting a common law tort, regardless of the nature of the tortious conduct involved.

It is to be noted that the issue below was raised on motion of respondent to dismiss the complaint for failure to state a claim. Contrary to the established law that the complaint must be viewed in the light most favorable to the plaintiff with every intendment in his favor, the court below adopted a narrow construction and rejected the complaint as failing to state an action under the common law. The theory of petitioner's first cause of action is that respondent through willful and malicious conduct wrongfully interferred with petitioner's relationships and contracts with its members and is amply supported under the doctrine of *Lumley v. Gye,* 2 El. and Bl 216, 118 Eng. Rep. 749; and the South Carolina cases of *Chitwood v. McMillan,* 189 S. C. 262, 1 S. E. (2d) 162; and *Keels v. Powell,* 207 S. C. 97, 34 S. E. (2d) 482. The pertinent allegations of this cause which support petitioner's theory may be summar-

ized as follows: (1) The organization of petitioner as a labor union (2) the employment by respondent of petitioner's members in various capacities in its plant (3) the recognition of petitioner by the N. L. R. B. as the sole bargaining representative of the employees in respondent's plant (4) the willful and malicious interference by respondent with petitioner's contracts and relationships with its members (5) the statements of respondent that it wanted petitioner to leave the plant and its employees to leave the society (6) the threats and promises to the members to compel them to terminate their membership in the union and to expel petitioner from said plant.

As a consequence of the foregoing actions on the part of the respondent, its agents and servants, the complaint further alleges that the said employees became insecure in their employment, were compelled to resign, and lost their membership in the society, as a result of which petitioner lost its recognition as sole bargaining representative of the employees in respondents plant, lost numerous members, was deprived of membership dues and other benefits accruing from its membership, suffered extreme humiliation and loss of prestige as a labor organization, all of which resulted in damages to petitioner.

The fallacy of the decision of the court below lies in its assumption that the conduct of the employer, as characterized in the complaint, does not fall within the ambit of the cases permitting a recovery for malicious interference with contractual relations. No authority was cited for the court's holding that a union was remediless under the common law where an employer sought willfully and maliciously to harm it in its relationships with its members. *Hitchman Coal Company v. Mitchell,* 245 U. S. 229, relied upon by the Court below, dealt with the right of an employer to require of its employees that they not join a union as a condition of employment and is not apposite. In

fact, *Hitchman* recognized that a court would properly enjoin interference with a contractual relationship by a third party, which in that instance was an employer's relationship with its employees. A logical corollary from this conclusion would be that a labor society would have a cause of action against an employer charged with perpetrating a tort of like nature against it. The Court below failed to recognize that petitioner's action is fully supported under numerous decisions of the State of South Carolina reaffirming the common law rule on this subject. *Chitwood v. McMillan, supra; Keels v. Powell, supra.* The remedy provided under the Federal Act for enjoining unfair labor practices does not preclude the maintenance of a well established action under the common law to recover monetary damages.

An important jurisdictional issue as between state and federal supremacy in an area where parallel remedies were provided under both the federal and state Acts was resolved in favor of state action in the recent case of *United Automobile Workers v. Wisconsin Employment Relations Board, supra,* where the state agency was permitted to enjoin conduct which was also subject to an unfair labor proceeding before the Federal Board. The recognition of the propriety of state action in that case would dictate a like conclusion in the case at bar.

2. **The decision of the Court below is in conflict with International Union, U. A. W. v. Russell, 88 So. (2d) 175, certiorari granted November 19, 1956.** A well reasoned decision based upon the holding in *Laburnum* is *International Union v. Russell, supra,* in which this Court recently granted certiorari (case No. 427, November 19, 1956). The complaint proceeds upon a like theory of unwarranted interference with contractual rights, in charging that the union unlawfully and maliciously prevented plaintiff from

engaging in his employment with resulting loss of wages to him. The Supreme Court of Alabama held that the Federal Act did not deprive a State Court of power to entertain an action brought by a non-striker against the union for recovery of damages caused by union agents malicious acts of violence and threats of personal injury which prevented him from working, even if these acts and threats constituted unfair labor practices under the Act. The legal basis upon which plaintiff's action rested was summarized in the following language of the opinion: "This Court recognizes that the right to pursue a lawful occupation is a property right and the wrongful interference therewith is an actionable wrong."

We respectfully submit that the considerations meriting the granting of certiorari in that case would apply with equal force to the action herein. The issue presented appears to be identical—Does the Federal Act so pre-empt the field as to preclude the maintenance of a common law tort action for damages where the conduct complained of also constitutes unfair labor practices? The desirability of clarifying the law in this broad area of increasing litigation would dictate the propriety of a review of the action of the Court below in this case. The question is of extreme importance in the administration of the Labor Management Relations Act and the assertion of common law rights generally. A thorough airing of this question in all of its phases can best be accomplished by permitting the argument of this case simultaneously with *Russell*.

3. **The action of the Court below deprives petitioner of its right to trial by jury, contrary to the Seventh Amendment to the United States Constitution.** As has been noted, the case herein has not been heard on its merits. The issue below was presented solely on the pleadings. Contrary to the rule of liberal interpretation where a complaint is at-

tacked for insufficiency, the Court below dismissed the action without giving petitioner an opportunity to be heard. This has resulted in a deprivation of petitioner's rights without recourse or compensation and in effect has granted respondent immunity from liability for its tortious conduct. Moreover, petitioner has been deprived of a fundamental right to trial by jury secured by the Seventh Amendment to the Constitution of the United States. The succinct language of this Court in *Jacobs v. City of New York,* 315 U. S. 752, recognizes the importance of safeguarding this right to a litigant:

> "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of Federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be zealously guarded by the Courts."

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should grant this petition for a writ of certiorari and reverse the judgment of the Court below.

Respectfully submitted,

HENRY HAMMER,

ISADORE S. BERNSTEIN,

CARL F. NITTO,

Attorneys for Petitioner.